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CRIMINAL LAW ISSUE

ATWATER v. LAGO VISTA, No. 99-1408, ___ U.S. ___, ___ S. Ct. ___, ____ U.S.L.W. ___ (Apr. 24, 2001).

SOUTER, J., delivered the opinion of the Court.

In Texas, if a car is equipped with safety belts, a front-seat passenger must wear one, [citation omitted], and the driver must secure any small child riding in front, [citation omitted]. Violation of either provision is "a misdemeanor punishable by a fine not less than $25 or more than $50." [Citation omitted.] Texas law expressly authorizes "[a]ny peace officer [to] arrest without warrant a person found committing a violation" of these seatbelt laws, [citation omitted] although it permits police to issue citations in lieu of arrest, [citation omitted].

[P]etitioner Gail Atwater was driving her pickup truck in Lago Vista, Texas, with her 3-year-old son and 5-year-old daughter in the front seat. None of them was wearing a seatbelt. Respondent Bart Turek, a Lago Vista police officer at the time, observed the seatbelt violations and pulled Atwater over. . . .

Turek then handcuffed Atwater, placed her in his squad car, and drove her to the local police station, where booking officers had her remove her shoes, jewelry, and eyeglasses, and empty her pockets. Officers took Atwater's "mug shot" and placed her, alone, in a jail cell for about one hour, after which she was taken before a magistrate and released on $310 bond.

Atwater was charged with driving without her seatbelt fastened, failing to secure her children in seatbelts, driving without a license, and failing to provide proof of insurance. She ultimately pleaded no contest to the misdemeanor seatbelt offenses and paid a $50 fine; the other charges were dismissed.

Atwater and her husband, petitioner Michael Haas, filed suit in a Texas state court under 42 U.S.C. § 1983 against Turek and respondents City of Lago Vista and Chief of Police Frank Miller. So far as concerns us, petitioners (whom we will simply call Atwater) alleged that respondents (for simplicity, the City) had violated Atwater's Fourth Amendment "right to be free from unreasonable seizure," [citation to Brief omitted], and sought compensatory and punitive damages.

. . . .

We granted certiorari to consider whether the Fourth Amendment, either by incorporating common-law restrictions on misdemeanor arrests or otherwise, limits police officers' authority to arrest without warrant for minor criminal offenses. [Citation omitted.]

. . .

Atwater's specific contention is that "founding-era common-law rules" forbade peace officers to make warrantless misdemeanor arrests except in cases of "breach of the peace,"

a category she claims was then understood narrowly as covering only those nonfelony offenses "involving or tending toward violence." Brief for Petitioners 13. Although her historical argument is by no means insubstantial, it ultimately fails.

. . . We begin with the state of pre-founding English common law and find that, even after making some allowance for variations in the common-law usage of the term "breach of the peace," [Footnote omitted.] the "founding-era common-law rules" were not nearly as clear as Atwater claims; on the contrary, the common-law commentators (as well as the sparsely reported cases) reached divergent conclusions with respect to officers' warrantless misdemeanor arrest power. Moreover, in the years leading up to American independence, Parliament repeatedly extended express warrantless arrest authority to cover misdemeanor-level offenses not amounting to or involving any violent breach of the peace.

. . . .

An examination of specifically American evidence is to the same effect. Neither the history of the framing era nor subsequent legal development indicates that the Fourth Amendment was originally understood, or has traditionally been read, to embrace Atwater's position.

. . . .

Nor does Atwater's argument from tradition pick up any steam from the historical record as it has unfolded since the framing, there being no indication that her claimed rule has ever become "woven . . . into the fabric" of American law. [Citation omitted.] The story, on the contrary, is of two centuries of uninterrupted (and largely unchallenged) state and federal practice permitting warrantless arrests for misdemeanors not amounting to or involving breach of the peace.

. . . .

Finally, both the legislative tradition of granting warrantless misdemeanor arrest authority and the judicial tradition of sustaining such statutes against constitutional attack are buttressed by legal commentary that, for more than a century now, has almost uniformly recognized the constitutionality of extending warrantless arrest power to misdemeanors without limitation to breaches of the peace. See *e.g.*, E. Fisher, Laws of Arrest §59, p. 130 (1967). . . .

. . . .

While it is true here that history, if not unequivocal, has expressed a decided, majority view that the police need not obtain an arrest warrant merely because a misdemeanor stopped short of violence or a threat of it, Atwater does not wager all on history. [Footnote omitted.] Instead, she asks us to mint a new rule of constitutional law on the understanding that when historical practice fails to speak conclusively to a claim grounded on the Fourth Amendment , courts are left to strike a current balance between individual and societal interests by subjecting particular contemporary circumstances to traditional standards of reasonableness. [Citations omitted.] Atwater accordingly argues for a modern arrest rule, one not necessarily requiring violent breach of the peace, but nonetheless forbidding custodial arrest, even upon probable cause, when conviction could not ultimately carry any jail time and when the government shows no compelling need for immediate detention. [Footnote omitted.]

If we were to derive a rule exclusively to address the uncontested facts of this case, Atwater might well prevail. She was a known and established resident of Lago Vista with no place to hide and no incentive to flee, and common sense says she would almost certainly have buckled up as a condition of driving off with a citation. In her case, the physical incidents of arrest were merely gratuitous humiliations imposed by a police officer who was (at best) exercising extremely poor judgment. Atwater's claim to live free of pointless indignity and confinement clearly outweighs anything the City can raise against it specific to her case.

But we have traditionally recognized that a responsible Fourth Amendment balance is not well served by standards requiring sensitive, case-by-case determinations of government need, lest every discretionary judgment in the field be converted into an occasion for constitutional review. [Citation omitted.] . . .

. . . .

But there is a world of difference between making that judgment in choosing between the discretionary leniency of a summons in place of a clearly lawful arrest, and making the same judgment when the question is the lawfulness of the warrantless arrest itself. It is the difference between no basis for legal action challenging the discretionary judgment, on the one hand, and the prospect of evidentiary exclusion or (as here) personal §1983 liability for the misapplication of a constitutional standard, on the other. Atwater's rule therefore would not only place police in an almost impossible spot but would guarantee increased litigation over many of the arrests that would occur. [Footnote omitted.] For all these reasons, Atwater's various distinctions between permissible and impermissible arrests for minor crimes strike us as "very unsatisfactory line[s]" to require police officers to draw on a moment's notice. [Citation omitted.]

. . . .

[W]e confirm today what our prior cases have intimated: the standard of probable cause "applie[s] to all arrests, without the need to 'balance' the interests and circumstances involved in particular situations." *Dunaway* v. *New York*, 442 U.S. 200 , 208 (1979). If an officer has probable cause to believe that an individual has committed even a very minor criminal offense in his presence, he may, without violating the Fourth Amendment , arrest the offender.

. . . Atwater's arrest satisfied constitutional requirements. There is no dispute that Officer Turek had probable cause to believe that Atwater had committed a crime in his presence. She admits that neither she nor her children were wearing seat belts, as required by Tex. Tran. Code Ann. §545.413 (1999). Turek was accordingly authorized (not required, but authorized) to make a custodial arrest without balancing costs and benefits or determining whether or not Atwater's arrest was in some sense necessary.

Nor was the arrest made in an "extraordinary manner, unusually harmful to [her] privacy or . . . physical interests." *Whren* v. *United States*, 517 U.S., at 818. As our citations in *Whren* make clear, the question whether a search or seizure is "extraordinary" turns, above all else, on the manner in which the search or seizure is executed. [Citations omitted.] Atwater's arrest was surely "humiliating," as she says in her brief, but it was no more "harmful to . . . privacy or . . . physical interests" than the normal custodial arrest. She was handcuffed, placed in a squad car, and taken to the local police station, where officers asked her to remove her shoes, jewelry, and glasses, and to empty her pockets. They then took her photograph and placed her in a cell, alone, for about an hour, after which she was taken before a magistrate, and released on $310 bond. The arrest and booking were inconvenient and embarrassing to Atwater, but not so extraordinary as to violate the Fourth Amendment.

. . . .

Rehnquist, C. J., and Scalia, Kennedy, and Thomas, JJ., joined.

O'Connor, J., filed a dissenting opinion, in which Stevens, Ginsburg, and Breyer, JJ., joined, in part, as follows:

A full custodial arrest, such as the one to which Ms. Atwater was subjected, is the quintessential seizure. See *Payton* v. *New York,* 445 U.S. 573 , 585 (1980). When a full custodial arrest is effected without a warrant, the plain language of the Fourth Amendment requires that the arrest be reasonable. [Citation omitted.] It is beyond cavil that "[t]he touchstone of our analysis under the Fourth Amendment is

always 'the reasonableness in all the circumstances of the particular governmental invasion of a citizen's personal security.' " [Citations omitted.]

We have "often looked to the common law in evaluating the reasonableness, for Fourth Amendment purposes, of police activity." *Tennessee* v. *Garner*, 471 U.S. 1, 13 (1985). But history is just one of the tools we use in conducting the reasonableness inquiry. [Citations omitted.] And when history is inconclusive, as the majority amply demonstrates it is in this case, see *ante*, at 4—24, we will "evaluate the search or seizure under traditional standards of reasonableness by assessing, on the one hand, the degree to which it intrudes upon an individual's privacy and, on the other, the degree to which it is needed for the promotion of legitimate governmental interests." [Citations omitted.] In other words, in determining reasonableness, "[e]ach case is to be decided on its own facts and circumstances." *Go-Bart Importing Co.* v. *United States,* 282 U.S. 344 , 357 (1931).

The majority gives a brief nod to this bedrock principle of our Fourth Amendment jurisprudence, and even acknowledges that "Atwater's claim to live free of pointless indignity and confinement clearly outweighs anything the City can raise against it specific to her case." *Ante*, at 26. But instead of remedying this imbalance, the majority allows itself to be swayed by the worry that "every discretionary judgment in the field [will] be converted into an occasion for constitutional review." *Ibid.* It therefore mints a new rule that "[i]f an officer has probable cause to believe that an individual has committed even a very minor criminal offense in his presence, he may, without violating the Fourth Amendment , arrest the offender." *Ante*, at 33. This rule is not only unsupported by our precedent, but runs contrary to the principles that lie at the core of the Fourth Amendment .

. . . .

Because a full custodial arrest is such a severe intrusion on an individual's liberty, its reasonableness hinges on "the degree to which it is needed for the promotion of legitimate governmental interests." *Wyoming* v. *Houghton*, 526 U.S., at 300. In light of the availability of citations to promote a State's interests when a fine-only offense has been committed, I cannot concur in a rule which deems a full custodial arrest to be reasonable in every circumstance. Giving police officers constitutional carte blanche to effect an arrest whenever there is probable cause to believe a fine-only misdemeanor has been committed is irreconcilable with the Fourth Amendment 's command that seizures be reasonable. Instead, I would require that when there is probable cause to believe that a fine-only offense has been committed, the police officer should issue a citation unless the officer is "able to point to specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant [the additional] intrusion" of a full custodial arrest. [Citation omitted.] . . .

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CIVIL LAW ISSUE

FORTE v. CONNERWOOD HEALTHCARE, INC., No. 48S02-9904-CV-270, ___ N.E.2d ___ (Ind. Apr. 18, 2001).

RUCKER, J.

[W]e conclude that punitive damages are not recoverable under the Child Wrongful Death Statute. We also conclude that a parent's common law claim for loss of a child's services survives enactment of the Child Wrongful Death Statute. However, under the

common law, punitive damages are not a part of the claim and therefore are not recoverable.

. . . .

[T]he Court of Appeals agreed that the trial court properly granted Defendants' motion concerning Mother's claim to a statutory right of punitive damages. See Forte v. Connerwood Healthcare, Inc., 702 N.E.2d 1108, 1111 (Ind. Ct. App. 1998). However, the Court of Appeals determined that the allegations in Mother's complaint established facts entitling Mother to punitive damages on another theory – common law loss of services. [Citation omitted.] . . .

. . . Although this Court has never addressed the issue, we agree with the Court of Appeals that punitive damages are not recoverable under the Child Wrongful Death Statute [IC 34-23-2-1]. . . .

. . . .

As the case law has developed, Indiana has continued to acknowledge a common law cause of action for loss of a child's services. Although we have long departed from the notion that only the father may pursue such an action - either parent may do so - we have continued to maintain that the action is in the nature of a property right as opposed to an action for personal injury. [Citations omitted.]

[T]he Child Wrongful Death Statute also allows a parent to pursue damages for loss of a child's services. . . . [U]nder the Child Wrongful Death Statute the recovery for loss of services is measured from the date of the child's death until a subsequent triggering event. [Citation omitted.] [Footnote omitted.] . . . However, the statute does not address, either in express terms or by unmistakable implication, a claim for loss of services arising during the child's lifetime; that is, from the date of injury to the date of death. We conclude therefore that a parent's common law claim for loss of a child's services survives enactment of the Child Wrongful Death Statute. . . .

. . . .

Our review of the relevant case authority leads us to the conclusion that although Indiana common law has permitted the recovery of punitive damages under "appropriate circumstances," those circumstances have never included the recovery of punitive damages for a claim of loss of a child's services. Our legislature has not addressed this issue, and Mother has not argued that this Court should abandon the doctrine of *stare decisis* and change the common law. Accordingly, as with the claim for a statutory right of punitive damages, the trial court properly granted Defendants' motion for partial judgment on the pleadings on this issue as well.

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SHEPARD, C.J., and BOEHM, DICKSON, and SULLIVAN, JJ., concurred.

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